

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|--|-------------------------------------|---------------------------|--|------------------------------------|---------------------------------|
| Investigator: Samuel Ross | Team: Squad #1 | CCRB Case #: 201703664 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Sunday, 04/30/2017 1:30 AM | Location of Incident: [REDACTED] | Precinct: 40 | 18 Mo. SOL 10/30/2018 | EO SOL 10/30/2018 | |
| Date/Time CV Reported Wed, 05/03/2017 6:36 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Tue, 05/09/2017 11:49 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |

| Witness(es) | Home Address |
|-------------|--------------|
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |

| Subject Officer(s) | Shield | TaxID | Command |
|--------------------|--------|--------|---------|
| 1. LT Eric Dym | 00000 | 933762 | PSA 7 |
| 2. An officer | | | |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|--------------------------|-----------|--------|----------|
| 1. POM Phillip Pena | 11192 | 956156 | PSA 7 |
| 2. SGT Jose Santory | 5457 | 941398 | PSA 7 |
| 3. POM Artur Yukhananov | 15272 | 956344 | PSA 7 |
| 4. POM Thomas Rossi | 07591 | 961205 | PSA 7 |
| 5. POM Miguel Henriquez | 09266 | 960653 | PSA 7 |
| 6. POM Nicholas Rios | 06583 | 955377 | PSA 7 |
| 7. SGT Natalie Bautista | 01127 | 926408 | PSA 7 |
| 8. POM Pasquale Dethomas | 11005 | 955873 | PSA 7 |
| 9. POM Giovanni Laguna | 26882 | 952959 | PSA 7 |
| 10. POF Katlin Sanchez | 10259 | 960988 | PSA 7 |

| Officer(s) | Allegation | Investigator Recommendation |
|---------------|---|-----------------------------|
| A.LT Eric Dym | Force: Lieutenant Eric Dym used physical force against § 87(2)(b) [REDACTED] | [REDACTED] |
| B.LT Eric Dym | Abuse: Lieutenant Eric Dym entered and searched § 87(2)(b) [REDACTED] in the Bronx. | [REDACTED] |
| C.LT Eric Dym | Abuse: Lieutenant Eric Dym refused to provide his name to § 87(2)(b) [REDACTED] | [REDACTED] |

| Officer(s) | Allegation | Investigator Recommendation |
|---------------|--|-----------------------------|
| D. An officer | Abuse: An officer damaged § 87(2)(b) property. | |

Case Summary

On May 3, 2017, § 87(2)(b) a non-witnessing complainant, reported this incident on behalf of § 87(2)(b) her daughter, generating original log #17-16518. The log was then forwarded to the CCRB, where it was received on May 9, 2017.

On April 30, 2017, at approximately 1:37 AM, PO Miguel Henriquez and PO Thomas Rossi of PSA 7 responded to a report of a fight taking place outside of § 87(2)(b) in the Bronx, a part of NYCHA's § 87(2)(b). The fight escalated and involved numerous individuals, including § 87(2)(b) sister. During the fight, PO Henriquez was accidentally pushed down a flight of stairs. He sustained a compound fracture to the left forearm.

In response to PO Henriquez's injury, numerous officers from both PSA 7 and the 40th Precinct responded to § 87(2)(b). Among these officers were Lt. Eric Dym, Sgt. Natalie Bautista, PO Philip Pena, PO Pasquale Dethomas, PO Nicholas Rios, PO Giovanni Laguna, and PO Katlin Sanchez (PO Murphy at the time of the incident), all of PSA 7.

After conducting witness interviews, Lt. Dym led this group of officers into § 87(2)(b) and to the doorway of Apartment #§ 87(2)(b) where § 87(2)(b) resided. Lt. Dym knocked and reportedly asked for § 87(2)(b) brother. § 87(2)(b) opened the door partly but stood behind the door in order to prevent it from opening further. She informed Lt. Dym that § 87(2)(b) was not present. Lt. Dym asked to enter the apartment in order to look for § 87(2)(b) who did not consent to the entry, told the officers that they could not enter without a warrant. Lt. Dym reportedly responded that the officers did not need a warrant when an officer has been injured.

Lt. Dym then allegedly forced the door open, pushing it into § 87(2)(b) (**Allegation A**). All of the officers then allegedly entered the apartment (**Allegation B**), after which Lt. Dym, Sgt. Bautista, and PO Pena allegedly searched the apartment (also **Allegation B**). Further, when § 87(2)(b) asked Lt. Dym for his shield number, he responded that he was a lieutenant, but then allegedly provided another officer's identifying information as his own (**Allegation C**).

In § 87(2)(b) bedroom, the officers encountered § 87(2)(b) husband. After confirming his identity, they arrested him for Assault in the 3rd Degree and Disorderly Conduct. As the officers escorted § 87(2)(b) from the apartment, he observed that an officer had allegedly sliced a plastic tarp covering construction on the bathroom wall (**Allegation D**).

§ 87(2)(b) was not arrested or issued a summons. Her sister, § 87(2)(b) and their friend, § 87(2)(b) were arrested for Assault in the 3rd Degree and Disorderly Conduct.

The investigation obtained NYCHA surveillance video from § 87(2)(b) which captured the fight outside, and which showed civilians and officers entering and exiting the building, but which did not capture the alleged entry or any interactions inside of Apartment #§ 87(2)(b).

This case was delayed because § 87(2)(b) and § 87(2)(b) did not provide statements to the CCRB until May 25, 2017. Further, the case was delayed by attempts to contact § 87(2)(b) and by the necessity of waiting for NYCHA video footage for the purpose of officer identification.

Mediation, Civil and Criminal Histories

- Due to § 87(2)(b)'s arrest and due to the nature of the entry allegation in question, this complaint was deemed unsuitable for mediation.
- An online FOIL request for any Notice of Claim filed in regards to this incident was submitted on August 24, 2017. This request was re-submitted on September 14, 2017. As of the writing of this report no response has yet been received.
- [REDACTED] § [REDACTED]

Civilian and Officer CCRB Histories

- § 87(2)(b) has been involved in one previous CCRB case (Board Review 01): #201306062, in which she alleged that an officer used profanity toward her and her mother, and that the officer pushed her mother. That case was closed as Complainant Unavailable.
- Lt. Dym, who has been a member of the NYPD for thirteen years, has been a subject in eleven previous CCRB cases (Board Review 02). One allegation made against Lt. Dym has been substantiated: a stop in Case #201114190. In that case, the NYPD declined to take disciplinary action. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

Findings and Recommendations

Explanation of Subject Officer Identification

- Although numerous officers entered § 87(2)(b) in the Bronx, Lt. Dym was the ranking officer among them. Further, as the Special Operations Lieutenant, he was the supervisor of each of the other officers involved, who were assigned to either Anti-Crime or Conditions. Therefore, Allegation B is pleaded only against Lt. Dym.

Allegations not Pleaded:

- § 87(2)(b) (Board Review 03) and § 87(2)(b) (Board Review 04) testified that when Lt. Dym knocked on their apartment door, the inner plate of the peephole came loose and fell to the floor. Lt. Dym (Board Review 05) and Sgt. Bautista (Board Review 06) confirmed that this took place. However, neither is it alleged nor is there any indication that Lt. Dym intentionally damaged the peephole. Therefore, no Property Damage allegation is pleaded in regards.
- Similarly, § 87(2)(b) (Board Review 04) alleged that the apartment door's lock was "shaky" after the incident. He believed that this was the result of the officers' knocking on the door. However, as above, it is not alleged that Lt. Dym intentionally damaged the lock and there is no indication that he did so. Further, § 87(2)(b) was in a rear bedroom while Lt. Dym knocked on the door, and he was not in a position to see whether or not the lock was damaged as a result of the knocking. Therefore, no Property Damage allegation is pleaded in regards.

Allegation A—Force: Lieutenant Eric Dym used physical force against § 87(2)(b)
Allegation B—Abuse of Authority: Lieutenant Eric Dym entered and searched
§ 87(2)(b) in the Bronx.

§ 87(2)(b) (Board Review 03) testified that on the evening of April 29, 2017, before the incident, she was in Manhattan with § 87(2)(b) and her § 87(2)(b)-year-old son, § 87(2)(b). While they were out she received several calls from her sister, § 87(2)(b), informed § 87(2)(b) that she was being antagonized by two women who lived at § 87(2)(b). There were women with whom members of § 87(2)(b) family had previously had numerous disputes.

At approximately 1:45 AM or 2:00 AM, § 87(2)(b) and § 87(2)(b) returned home. There were numerous police officers gathered outside. However, § 87(2)(b) and § 87(2)(b) did not know why the officers were present and had no involvement in whatever incident had taken place.

§ 87(2)(b) and § 87(2)(b) went upstairs to their apartment. While in the bedroom, § 87(2)(b) heard a loud banging at the apartment door. A male voice, later determined to be that of Lt. Dym, yelled, § 87(2)(b) come out.” § 87(2)(b) was confused because her brother § 87(2)(b) was in Manhattan at the time. § 87(2)(b) did not answer the door. However, the banging continued for approximately five more minutes. § 87(2)(b) left § 87(2)(b) and § 87(2)(b) in her bedroom. She went to the apartment door and opened it. The door swung inward into the apartment, to § 87(2)(b) right. § 87(2)(b) stood partly behind the door, with her right foot behind the door to prevent it from opening further.

Lt. Dym stood in the hallway with approximately three plainclothes officers and four uniformed officers. § 87(2)(b) told Lt. Dym that § 87(2)(b) was not there. Lt. Dym stated that the officers needed to enter the apartment to look for him. § 87(2)(b) responded that the officers could not enter without a warrant. Lt. Dym then stated that the officers did not require a warrant because an officer had been injured.

Lt. Dym never asked for permission to enter the apartment. However, he then pushed the door open, pushing it into § 87(2)(b) who stumbled backward but did not fall. Lt. Dym and all of the officers in the hallway entered the apartment, arriving in the living room.

Lt. Dym, Sgt. Bautista, and PO Pena proceeded to search every room in the apartment. They looked under beds, in closets, and in the shower. They searched in areas where a person could hide. They did not search inside of any small compartments, such as drawers. Ultimately, the search yielded negative results. As noted above, after encountering § 87(2)(b) the officers placed him under arrest.

§ 87(2)(b) (Board Review 04) stated that when § 87(2)(b) went to the apartment door, he remained in the rear bedroom. He heard Lt. Dym ask where § 87(2)(b) was and heard § 87(2)(b) respond that § 87(2)(b) was not there. § 87(2)(b) then asked if the officers had a warrant. Lt. Dym responded that the officers did not require a warrant. § 87(2)(b) did not see officers until they entered the bedroom where he was waiting. He never heard any officer ask for permission to enter the apartment.

Lt. Dym (Board Review 05), Sgt. Bautista (Board Review 06), and PO Dethomas (Board Review 07) testified that upon arrival outside of § 87(2)(b) they each interviewed civilians in order to learn what had taken place prior to their arrival. Sgt. Bautista and PO Dethomas both learned from independent witnesses that one of the individuals who had instigated the fight could be located in Apartment #§ 87(2)(b). Sgt. Bautista learned that this individual was the brother of the resident of that apartment. Lt. Dym learned from independent witnesses that two individuals involved in the fight were located in that apartment. These officers either did not learn or did not remember the names of the individuals alleged at that time to have started the fight. Additionally, the officers did not record any information for any of the witnesses in question.

§ 87(2)(b) (Board Review 08) and § 87(2)(b) (2)(b) (Board Review 09), who fought with § 87(2)(b) stated that they did not provide any information to officers concerning Apartment #§ 87(2)(b).

At that time, it was believed that PO Henriquez, whose arm was broken during the fight, had been intentionally pushed. (Per the relevant UF-61 [Board Review 10], video later revealed that he was knocked down incidentally.) However, neither Lt. Dym, nor Sgt. Bautista, nor PO Dethomas received information about the whereabouts of the individual suspected to have pushed PO Henriquez. There was no information suggesting that such an individual was in Apartment #§ 87(2)(b).

Lt. Dym, Sgt. Bautista, PO Pena, PO Dethomas, PO Sanchez, PO Laguna, and PO Rios entered § 87(2)(b) and went to the fourth floor hallway.

Lt. Dym knocked at the door. He testified that he received a response within thirty seconds, while the other officers described waiting for a period of time ranging from two to fifteen minutes before receiving a response.

Lt. Dym stated that when § 87(2)(b) opened the door, he identified himself and explained that he was conducting an investigation into an assault which had occurred outside. According to Lt. Dym, the interaction was pleasant, and § 87(2)(b) then provided consent for the officers to enter her apartment. She did not stand behind the door with her body positioned to prevent the door from opening further. She did not object to officers entering the apartment. She never said that officers could not enter without a search warrant. Lt. Dym did not force the door open or push the door into § 87(2)(b).

Sgt. Bautista and PO Sanchez (Board Review 11) corroborated Lt. Dym's statement that § 87(2)(b) consented to the entry. Neither recalled Lt. Dym forcing the door open or pushing it into § 87(2)(b).

PO Pena (Board Review 12) did not recall if Lt. Dym asked to enter the apartment or if § 87(2)(b) gave consent. He did not recall any request for a warrant. He also did not recall § 87(2)(b) standing behind the door or Lt. Dym pushing the door into her. PO Dethomas stated that he stood around the corner in the hallway and he was not able to hear the exchange.

Only Lt. Dym, Sgt. Bautista, and PO Pena acknowledged entering the apartment. PO Sanchez and PO Dethomas both stated that when the supervisors entered, they each departed from the fourth floor.

NYCHA surveillance video obtained from § 87(2)(b) confirms that Lt. Dym, Sgt. Bautista, and PO Pena exited the building together, without any other officers, at 2:46 AM:



201703664_20170720_0932I_DM.mp4

Video 1: Lt. Dym, Sgt. Bautista, and PO Pena exit § 87(2)(b)
Original video linked it IA #197
28 seconds

Lt. Dym and Sgt. Bautista denied searching the apartment. They testified that § 87(2)(b) led them to the rear bedroom, where they encountered § 87(2)(b). According to Lt. Dym and Sgt. Bautista, another, unidentified officer brought § 87(2)(b)'s identification downstairs, returned, and confirmed that he was one of the perpetrators who had instigated the fight, at which time § 87(2)(b) was placed under arrest. They did not check any other rooms in the apartment. According to Lt. Dym, § 87(2)(b) informed him that there was no one else inside of the apartment. Although Lt. Dym had received information that two perpetrators were inside of the apartment, he believed her, as she was forthcoming in bringing the officers directly to her husband. Sgt. Bautista, who had information that § 87(2)(b)'s brother was involved in the fight, described the apartment as having an "open layout," rendering it unnecessary to check any other rooms for another individual. PO Pena, for his part, stated that he followed Lt. Dym and Sgt. Bautista to the rear bedroom, and that he did not recall ever checking any other rooms in the apartment.

While it is undisputed that the officers entered the apartment, § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)



201703664_20170720_0932_DM.mp4

Video 2: § 87(2)(b) and § 87(2)(b) enter § 87(2)(b) during fight
Original video linked to IA #188
1 minute 6 seconds

§ 87(2)(b), § 87(2)(g)

Allegation C—Abuse of Authority: Lieutenant Eric Dym refused to provide his name to

§ 87(2)(b)

§ 87(2)(b) (Board Review 03) and § 87(2)(b) (Board Review 04) stated that while the officers were searching the apartment, § 87(2)(b) Llannes asked Lt. Dym for his shield number. She did not ask for his name. His shield was not displayed. Lt. Dym replied that he was a lieutenant and then provided the name “Pena.” § 87(2)(b) and § 87(2)(b) doubted that this was his name, as he did not appear to be Hispanic. Lt. Dym also provided a shield number, which may have been “1192.”

Lt. Dym (Board Review 05) testified that he introduced himself through the door, prior to the entry, as Lt. Dym, Special Operations Lieutenant for PSA 7. He held up his shield to the peephole. He did not recall § 87(2)(b) ever requesting his name or shield number. He never refused to provide his identifying information to her. Further, her never provided PO Pena’s name or shield number as his own. He also did not remember if any civilian asked PO Pena for his name or shield number.

Sgt. Bautista (Board Review 06) stated that at some point, § 87(2)(b) asked Lt. Dym for his name and shield number. Lt. Dym provided his name and spelled it out to her. She wrote his name down and asked for his shield number again. He told her he that he did not have a shield number. § 87(2)(b) never asked for PO Pena’s name or shield number and Sgt. Bautista did not remember if PO Pena ever provided this information to her. Sgt. Bautista never heard Lt. Dym provide PO Pena’s name or shield number as his own.

PO Pena (Board Review 12) stated that inside of the apartment, § 87(2)(b) asked him for his name and shield number. He provided them both to her. PO Pena did not remember if § 87(2)(b) requested Lt. Dym’s name or shield number. He did not recall if Lt. Dym provided identifying information to any civilian. Lastly, PO Pena did not recall Lt. Dym ever providing PO Pena’s identifying information.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation D—Abuse of Authority: An officer damaged § 87(2)(b) property.

§ 87(2)(b) (Board Review 04) stated that as officers escorted him from the bedroom to the living room, he passed by the bathroom. He looked through the door. NYCHA maintenance had cut a large hole in the drywall in order to repair a leak, and the hole had been covered with a plastic tarp. § 87(2)(b) observed that someone had sliced the tarp, ostensibly to make sure that no one was hiding in the wall. § 87(2)(b) did not see who did this, however. § 87(2)(b) did not provide a photo of the alleged damage. § 87(2)(b) (Board Review 03) did not make any such allegation.

Lt. Dym (Board Review 05), Sgt. Bautista (Board Review 06), and PO Pena (Board Review 12) each denied ever slicing a tarp on any wall. They also denied witnessing any officer do so. As addressed above in the analysis of Allegation A, they denied ever searching the apartment. Lt. Dym stated that he never saw any such tarp and PO Pena did not recall ever seeing it. Sgt. Bautista recalled observing a tarp covering a wall inside of a bedroom, but she did not enter the bedroom. She saw the tarp as she passed by the open door. She did not remember any other officers entering that bedroom.

§ 87(2)(b), § 87(2)(g)

Squad: 1

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer:

Title/Signature

Print

Date